

MS4 Permit Renewal Meeting

CDPHE: 4300 Cherry Creek Drive S., Denver CO

Sabin/Cleere Rooms, Building A

March 6, 2013

9-11:30 am

Topics

- Program Description Document
- Illicit Discharge
- Construction
- Post Construction

Agenda

9 – 9:10 am	Sign in / Introductions
9:10 – 9:45 am	Program Description Document
9:45 – 10:15 am	Illicit Discharge
10:15 – 10:45 am	Construction
10:45 – 11:15 am	Post Construction
11:15 – 11:30 am	Summarize ideas

Meeting attendees are encouraged to familiarize themselves with the Supplemental Information as well the targeted permit questionnaire developed by the Division to understand the specific challenges with the current permit language; and to help brainstorm ideas and solutions during permit renewal meetings.

The goal for all permit elements is to have clear expectations, which establish a basic standard of performance for all permittees that are auditable by the Division.

Dial-in access will be provided to all permittees before the meeting. Please contact Michelle DeLaria at 303.692.3615 or Michelle.DeLaria@state.co.us with any questions.

Supplemental Information*

1. **Program Description Document**—Concept Language

- a. The Permittee must develop and maintain a current written Program Description Document (PDD) that reflects current conditions that are implemented to meet permit requirements. The purpose of the plan is to maintain a current summary of all compliance activities and documents that comprise the permittee's stormwater management program. The PDD must contain the following format and information:
 - The PDD must be organized according to the numbering convention of the permit.
 - The PDD must include a summary describing how each permit element is being met.
 - The PDD must include an organizational chart and a description of the departments and individuals (by job title) involved in the implementation of the permittee's MS4 program and the numbered permit component (e.g., Part I.B.5(a)(2)).
 - The PDD must include how the permittee's program implementation will be documented, how documentation is maintained; and location and format where the documentation will be maintained (e.g how inspection's will be documented, and where kept).
 - For permit elements that require the implementation of companion documents (ordinance, intergovernmental agreement, codes, manuals, SOPs, guidance), the PDD must include the complete names of the companion documents, adopted dates, revised date, location where the supporting documentation is maintained, and any other identifying information.
 - The PDD must be maintained in a format (hard copy and/or electronic) to be submitted to the Division immediately upon request.

2. **Illicit Discharge** –This is a continuation from the previous meeting agenda, which was tabled on 2/19/2013 because of time.

- a. Current Challenges/Observations: Current process for occasional, incidental non-stormwater discharge does not result in transparency regarding documentation. Some MS4s are allowing non-storm discharges with significant pollutant potential. There is a lack of clarity in Division expectations in what non-stormwater discharges must be controlled and what constitutes adequate response and enforcement expectations.
- b. General concept of enforceable permit requirement format:
 - A) The permittee must trace the source of an illicit discharge when identified at an outfall or within the MS4. The permittee must have tool(s) available to allow the tracing from the outfall to inlets either by backtracking or identifying the potential inlets and screening those. Required documentation includes the procedures, tools and training described below in addition to records of all illicit discharges and the responsible party if identified. The Program Description Document must

include a summary of the below elements that also contains the names and location of the required documentation.

- 1) Procedures identifying how the point of entry is identified into the system for an ID identified within the system or at an outfall.
- 2) The specific tools that are available to the permittee for use that will allow the tracing, including as applicable: storm sewer maps, Dye tracers, cameras, aerial maps, etc
- 3) The training materials and schedule for employees

c. Additional concept to discuss:

i. Enforcement Response Plan - A written procedure that ensures a uniform enforcement response for comparable violations.

1. Ensure that violators return to compliance as quickly as possible.
2. Deter future noncompliance.
3. Penalize violators.

ii. Low Risk Discharges

1. Low Risk Discharges are established by WQ Policy 27

[http://www.colorado.gov/cs/Satellite/CDPHE-](http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251596877213)

[WQ/CBON/1251596877213](http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251596877213), not by permit, regulation or law.

2. Recommended language in the permittees code to exempt Low Risk discharges from being considered as illicit discharges is: "Discharges in accordance with the Division's Low Risk Discharges policy guidance documents, provided that such discharge is in full compliance with all requirements of the Low Risk Discharges policies and guidance, " or discharges for which an authorization or formal commitment to not pursue enforcement actions against under a policy is issued and administered under the authority of CDPHE, provided the discharger is in full compliance with the all the requirements of the policy."

3. The following language has been observed in some permittees' code and does **not** exempt Low Risk discharges from being considered as illicit discharges: "The prohibitions set for in this section shall not apply to any non stormwater discharge permitted under a CDPS permit, waiver, or waste discharge order issued and administered by CDPHE (or EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations."

4. Low Risk discharges do not fall under a permit, waiver, order and are not supported by law or reg. These are discharges for which the Division does not pursue permitting or enforcement for and the permittee and discharge assume all responsibility for the occurrence of the discharge.

iii. The Division is considering removal the "incidental, occasional non-stormwater discharges" section; and add dye testing to the "allowable" list. Charity car washes are under discussion.

d. Targeted permit questionnaire: Many permittees have submitted documentation

that indicated that the permittee allows the “allowable discharges: list from the permit, yet the submitted code language includes different wording for the discharges: “water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction,” and residential car washing.” For example, “Non commercial vehicle washing” is not the same as “individual residential car washing.” Many permittees indicated that they did not have a list of occasional, incidental non-stormwater discharges, yet the submitted code language includes: “Water not containing pollutants,” discharges necessary to protect public health and safety, “discharges from ditches,” and did not provide supporting documentation or a procedure for allowing these discharges. Some permittees stated that they have developed a list of occasional, incidental non-stormwater discharges yet did not submit information or documentation that substantiates the occasional, incidental non-stormwater discharges, or stated that the determination is “case by case” without providing any information about the “case by case” decision-making process. **The Division will be more clear in the Permit about the elements that are required in the regulatory mechanism.**

3. **Construction**— This is a continuation from the previous meetings to discuss concepts for clear requirements in the permit.
 - a. Construction Program elements: The following basic program elements need clear, auditable permit requirements
 - Ordinance/regulatory mechanism
 - Site plan elements and standards
 - Site plan review to confirm elements and standards are met
 - Site Inspections
 - Enforcement for BMP violations
 - Education and Training
 - b. Division concepts as a framework for crafting permit language
 - i. Ordinance
 1. The regulatory mechanism must require erosion, sediment and waste control BMPs to be implemented and maintained in operational condition.
 - ii. Site plan elements and standards:
 1. Site plans must include erosion, sediment and waste control BMPs to address all sources of pollutants.
 2. Site plans must include a sediment control measure for all disturbed areas during all stages of construction.
 3. Submitted site plans must include BMP details.
 - iii. Site plan review to confirm elements and standards are met
 1. The site plan review and approval/acceptance process must require that BMPs used for all applicable phases of the project are reflected on the site plan.
 2. Written confirmation that the approved/accepted site plan has met the permittee’s requirements.

3. Written confirmation that the approved/accepted site plan includes a sediment control measure for all disturbed areas during all stages of construction.

iv. Site Inspections

1. Full site inspections must include oversight of all control measures used on the project and a statement that confirms all control measures implemented at the time of the inspection were inspected. This would not make additional inspections that occur more frequently, such as screening, right-of-way, follow-up etc, being used as PART of the overall inspection program, but would have to be in addition to some stated frequency of full inspections.
2. Site inspections must document presence or evidence of an offsite discharge.
3. Site inspections must document all violations of control measures.
4. The permittee must document the return to compliance for sites with violations of control measures.
5. The permittee must escalate enforcement for sites with uncorrected violations.

v. Enforcement for violations

1. The permittee must develop and implement an enforcement response plan that details the permittee's response to violation scenarios. The response plan must include:
 - a. Construction sites that did not complete the permittee's review process prior to construction.
 - b. Construction sites with no BMPs
 - c. Construction sites with an offsite discharge
 - d. Construction sites with repeat violations of control measures. Repeat means that there are 3 consecutive inspections (chronic) with violations of control measures.
 - e. Construction sites with repeat chronic periods of non-compliance (recalcitrant). Recalcitrant is 2 periods of chronic non-compliance.
2. The enforcement response plan must reference all of the permittee's enforcement tools and in what scenarios they will be used.
3. The Construction sites with an offsite discharge must have enforcement immediately escalated to a level that includes remediation and corrective action (i.e. cleanup and installation of control measures)
4. Construction sites without control measure implemented in accordance with good engineering and hydrologic practices must have an enforcement level that includes remediation immediately after inspection.

vi. Training

1. The Permittee must document the staff by title or work group that conducts site inspections.
 2. The Permittee must provide a description of the training, syllabus of training materials, frequency of training and summary of external training (e.g., contractors).
- c. Targeted permit questionnaire: Some permittees stated that they have a regulatory mechanism that requires construction BMPs “be implemented and maintained,” yet the submitted code language only requires BMPs to be maintained, but not to be implemented. Therefore the lack of BMPs on a construction site is not automatically a violation. For others, the submitted language requires erosion and sediment control BMPs and not waste control BMPs. **The Division will be more clear in the Permit about the elements that are required in the regulatory mechanism.**

4. Post Construction—concept language

- a. New development projects: require structural control measures that are designed to address the equivalent of the water quality capture volume as described in UDFCD Volume 3 of the Technical Criteria Manual for 100% of the impervious area on the project site.
- b. Redevelopment projects: require structural control measures that are designed to address the equivalent of the water quality capture volume as described in UDFCD Volume 3 of the Technical Criteria Manual for 100% of the impervious area on the project site unless the permittee has implemented options described below for implementing water quality control measures. Water quality capture volume for 100% of the project area may be applied to onsite water quality control measures and must be applied to off site, regional water quality control measures for redevelopment projects.
 1. The Permittee may adopt supplemental design standards for onsite water quality control measures for that include the following standards for the following types of redevelopment projects:
 - a. WQCV from X% of the redevelopment project site impervious area
 - b. Runoff reduction of the equivalent of the WQCV in onsite water quality control measures from <X% of the redevelopment project site impervious area for, brownfields, high density redevelopment, mixed use, or transit-oriented redevelopment with a density of 40 dwelling units/acre.
 - c. Treatment with non- capture practices to a measurable standard; e.g: 80% TSS removal,
 - d. Implementation of the following green infrastructure techniques to accommodate WQCV from X% of the site:
 - i. flush curbs and site plan design for runoff to flow to adjacent vegetation
 - ii. vegetated swales
 - iii. permeable pavements
- c. Targeting Permit Questionnaire: Many permittees stated that they have a design standard and then stated “we refer to UDFCD Volume 3,” or similar language. Stating that volume 3 is referred to or BMPs are chosen from Volume 3 is not equivalent as confirming that water quality capture volume is the design standard

or that the guidance in Volume 3 has been adopted by the permittee as a required standard. Many permittees are frequently using waivers or exemptions to not require WQCV. **The Division will be more clear in the Permit about the elements that are required in the regulatory mechanism.**

*Supplemental Information is intended to provide general concepts and commonly encountered challenges with current permit language. It is not intended to be an exhaustive accumulation and description of all specific elements to be addressed in the permit renewal.

Summary

The summary was compiled after the meeting on 3/06/13. The summary is not a verbatim transcript of the meeting and points of potential agreement have not been included because the meeting goal was to share information to facilitate permit drafting, and not to make decisions or to obtain stakeholder commitments.. Bulleted points may not follow the order of actual discussion.

1. Program Description Document (PDD)

i. Organization chart:

- Permittees asked questions about the detail of the organization chart and indicated that too much detail was cumbersome to maintain and negated the benefits of having a chart.
- The Division stated that the purposes of an organizational chart include: having the chart as an internal tool for employees to know what departments/groups complete certain permit tasks, for clarity on audits, to confirm that the legal contact has authority over the permit elements by having all permit tasks structurally under the legal contact as indicated on an organizational chart.
- The current concept language states that the PDD must be “immediately” available. Permittee comment to the Division suggested a different word or to provide a time frame for availability of the PDD (e.g., “within 7 days”).

2. Illicit Discharge

i. Enforcement Response Plan

- Comments from permittees indicated that an ERP in terms of identifying escalation procedures was not necessary because illicit discharges are usually a one-time event. Also permittees believed that illicit discharges are easily addressed through the existing IDDE plan and proposed permit revisions that require “tools” to address illicit discharges.
- An alternative option was discussed to require permittees to have the ability to assess penalties and address escalation for chronic and recalcitrant operators, instead of requiring a full ERP with scenarios where penalties would be assessed.
- Permittees requested clarification and a definition of “penalties,” (e.g., stop work order, reinspection fees, no inspections, municipal court summons).

ii. Incidental non-stormwater discharges

- The Division indicated that removing the incidental, occasional non-stormwater discharges is being considered or the Division anticipates changing the process for these discharges to be transparent and applicable to the permit instead of permittee by permittee.
- Permittees prefer to maintain a process for including incidental non-stormwater discharges in the permit instead of removing the process to allow incidental non-stormwater discharges.
- The Division explained a potential process for keeping incidental non-stormwater discharges in the permit. The process could include: Division review of permittee-submitted documentation that indicates that certain incidental non-stormwater discharges are not likely to contain pollutants. The Division could then modify the permit to allow the discharges or use the low risk discharges process to add a specific discharge.
- The Division added that the compliance schedule could be used to bridge the timeframe for new procedures for incidental non-stormwater discharges so that permittees can remain in compliance.

3. Construction

- i. Site plan elements and standards
 - Permittees asked questions about the requirement for a sediment BMP for all disturbed areas prior to discharge, and if individual lots are included in this requirement.
 - Permittees asked for clarification about allowing sweeping to address trackout from individual lots and mentioned instances where BMPs may be unnecessary or cause more damage (e.g., trail and pipeline projects through natural or agricultural areas)
 - The Division clarified that inlet protection was not an appropriate BMP for concentrated flow and a natural buffer is not an acceptable sole sediment BMP. The Division stated that the intent was to include individual lots in this requirement, however permittee questions and comments indicated that more consideration is needed to address tracking from individual lots.
- ii. Site plan review
 - Permittees questioned the need to require written confirmation that the site plan was approved and met permittee requirements.
 - Permittees asked for more clarification about requiring BMP details on the site plan.
- iii. Site Inspections
 - Permittee asked for more clarification and a definition for “offsite discharge,” and suggested additional terms such as “threatened discharge.”
 - Permittee comment included the concern that requiring offsite discharge and BMP conditions to be documented could encourage reduced inspection for falsification of records.

- iv. Enforcement
 - Permittees would like to differentiate between BMPs that need maintenance vs failing BMPs in the context of inspection and/or enforcement escalation requirements in the permit.
 - Permittees expressed concern for an enforcement response plan matrix of violation scenarios that remove flexibility and stated that the permit should focus on the general goals of compliance and minimizing offsite pollutant discharges rather than scenarios.
- v. Education and Training
 - The Division stated that the current permit wording needs more clear requirements about training for inspectors and contractors.

4. Post Construction

- The Division asked permittees to think about redevelopment scenarios where a different design standard other than WQCV for 100% of the site is appropriate.
- Permittees commented that they wanted flexibility and asked about regional systems and the requirements of treatment prior to discharge.
- The Division needs to define the level of treatment that must be accomplished prior to discharge from the site for onsite BMP vs. regional BMP in a state water.
- The Division briefly addressed the difference between a discharge to a water of the US and discharge to a State water and added that this is a discussion outside the scope of the current meeting and a discussion on this topic needs to be scheduled.

Public education and outreach (not on agenda)

- iii. The Division received a concept for a public education activity list, where permittees must pick 6 activities from the list.
 - i. The list does not indicate the extent of the activity. For example, bus shelter ads, brochures and pet waste stations are on the list, but there is not indication if a certain number of ad or brochures or pet waste stations are needed to satisfy that element.
 - ii. The permittees asked questions such as, If “brochures” is one activity and the list doesn’t define the extent of the activity, can the permittee satisfy the 6 activity requirements by developing 6 brochures?
 - iii. The Division stated that the Division assumed the intent of the submitted list was that permittees would pick and complete 6 different activities from the list for each year.